IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION No: 5762 of 1996

Between:

Sri Poorna Theatre, rep. by its Partner: Purnachandra Rawlo. Thoturu, Ichapuram, Srikakulam District.

..... PETITIONER

AND

The Entertainment Tax Officer,
Ichapuram, Srikakulam District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondent herein in cancelling Form-IV permit of the petitioner theatre in his proceedings E.T. File No.5/94-95, dt. 30.3.1995 and the consequent Endorsement of the respondent in E.T.File No.5/95-96, dt. 18.11.1995, as illegal, null and void; and consequently direct the respondent to calculate the tax of the petitioner theatre under Sec.5(1) of the A.P. Entertainment Tax Act; and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.DURGA PRASAD

Counsel for the Respondent: MR.K.RAJI REDDY(SPL.SC FOR CT)

The Court made the following:

ORAL ORDER:- (Per the Hon'ble Sri Justice M.H.S.Ansari)

Petitioner has questioned the proceedings of the Entertainment Tax Officer (for short 'ETO') dated 30-3-1995 whereby the Form-IV permit, issued by the ETO under the provisions of A.P. Entertainment Tax Act and Rules, 1939 was cancelled with effect from the midnight of 30-3-1995.

2. A perusal of the impugned order of the ETO would show that a show-cause notice was issued proposing for cancellation of Form-IV permit for alleged contravention of the provisions of Form-IV permit dated 01-04-1994. As no written objections were filed by the petitioner against the proposed cancellation of Form-IV permit nor the tax due as detailed in the notice was paid, action was taken for cancellation as noticed supra.

3. Mr. K.V. Durga Prasad, learned counsel for the petitioner contended that there is no power conferred under the Act or the Rules upon the ETO who cancelled Form-IV permit and therefore, the impugned order is *ultra vires* or in excess of his powers and warrants the same to be quashed for the said reasons.

4. On behalf of the respondent-department, action is sought to be sustained for the reasons stated in the impugned order and certain reasons which are stated in the counter-affidavit.

5. From the counter-affidavit, it is clear that the petitioner-exhibitor filed Form-III permits for the years 1993-94 and 1994-95 and thereafter, Form-IV permits were issued to the petitioner-exhibitor fixing weekly tax at Rs.2,419/- for 1993-94 and

Rs.2,514/- for 1994-95. It is further averred that the petitioner fell in arrears for the said years as under:

"1993-94 : Rs. 47,887=00

1994-95 : Rs. 23,492=00"

6. The show-cause notice was thereupon issued and as no objections were filed, orders were passed as in the impugned order.

7. Where a cinema exhibitor opts to be governed by Section 5 of the A.P. Entertainment Tax Act (for short 'the Act'), instead of paying tax under Section 4 of the Act, the procedure prescribed under Rule 27 has to be followed for verification of the particulars supplied by the exhibitor in Form-III and thereafter, the amount is to be determined if the conditions are satisfied. In the instant matter, it is not in dispute that the prescribed procedure has been followed and permit under Form-IV has been issued.

8. The said Form-IV is sought to be cancelled for the alleged contravention of the provisions of Form-IV permit. The contravention alleged is stated to be that the petitioner has failed to pay the amount of tax on due dates and has fallen in arrears. Sub-section (8) of Section 5 of the Act provides the remedy in such cases and for that reason the same is extracted herein:

> "8. Where a proprietor fails to pay the amount of tax on the due date such amount of tax shall be recoverable with interest calculated at such rate as may be prescribed."

9. There is no power vested in the ETO to cancel the Form-IV permit, at least, no such provision has been brought to our notice by the learned counsel appearing for the respondent-authority. Accordingly, we hold that the action of the respondent in canceling the Form-IV permit is without authority of law. Consequently, the impugned order dated 30-3-1995 cannot be sustained.

10. The Writ Petition is accordingly allowed, quashing and setting aside the impugned order.

11. It is however clarified that this order shall not preclude the respondent-authority from taking such steps as are open to it under law for recovery of the amount as may be due or payable by the petitioner towards tax or interest. It is open to the respondent to recover the amount in accordance with law.

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(M.H.S. ANSARI, J.)

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(S. ANANDA REDDY, J.)

Date: 21-12-2004

ES

To

1. The Entertainment Tax Officer, Ichapuram, Srikakulam District.

2. 2 CD copies.